

February 19, 2013

**BY ELECTRONIC DELIVERY**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington DC 20554

**Re: Progeny LMS, LLC**  
**Permitted Written *Ex Parte* Presentation**  
**WT Docket No. 11-49**

Dear Ms. Dortch:

In several recent filings in the above referenced docket, two public interest organizations urged the Commission to delay its grant of authority to Progeny LMS, LLC (“Progeny”) to provide E911 position location services to enable emergency first responders to identify the location of wireless callers needing emergency assistance.<sup>1</sup> Despite the Commission’s conclusion that a “significant public safety concern . . . requires the development” of the type of service that Progeny seeks to provide,<sup>2</sup> the two

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<sup>1</sup> See, e.g., Letter from Michael Calabrese, Director, Wireless Future Project, Open Technology Institute, New America Foundation, to Marlene H. Dortch, Secretary, Federal Communications Commission, *Ex Parte* Presentation in WT Docket No. 11-49 et al. (Feb. 14, 2013) (“*New America Letter*”); Letter from Harold Feld, Legal Director, Public Knowledge, to Marlene H. Dortch, Secretary, Federal Communications Commission, *Ex Parte* Presentation in WT Docket No. 11-49 et al. (Feb. 7, 2013) (“*Public Knowledge letter*”).

<sup>2</sup> See Amending the Definition of Interconnected VoIP Service in Section 9.3 of the Commission’s Rules, GN Docket No. 11-117, Wireless E911 Location Accuracy Requirements, PS Docket No. 07-114, E911 Requirements for IP-Enabled Service Providers, *Notice of Proposed Rulemaking, Third Report and Order, and Second Further Notice of Proposed Rulemaking*, FCC 11-107, ¶ 86 (July 13, 2011) (“[W]e consider indoor location accuracy to be a significant public safety concern that requires development of indoor technical solutions.”); see also Request by Progeny LMS, LLC for Waiver of Certain Multilateration Location and Monitoring Service Rules, *Order*, DA 11-2036, ¶ 1 (Dec. 20, 2011) (“*Progeny Waiver Order*”) (“We seek to facilitate the deployment of a multilateration service that can provide highly accurate location determinations, including more precise location information that can improve delivery of E 911 emergency services.”).

organizations claim that further delay is warranted in order to complete an additional round of public comment on the definition of the Commission's requirement that Progeny must demonstrate that its service will not cause unacceptable levels of interference to Part 15 devices.<sup>3</sup> The public interest organizations also urged the Commission to define specific tests to be used to determine whether Progeny has demonstrated that its network does not cause unacceptable levels of interference to Part 15 devices.<sup>4</sup>

The two organizations appear to approach the issue from a viewpoint that the Commission's restriction on Progeny's service and its Part 15 test requirement have never before been placed on public notice for comment. Of course, nothing could be further from the truth.

The Commission first established in an order released in February 1995 that licensees in the multilateration location and monitoring service ("M-LMS") must demonstrate that their networks will not cause unacceptable levels of interference to Part 15 devices.<sup>5</sup> The Commission's decision was based on an extensive record that resulted from multiple rounds of public comment from both providers of LMS services and manufacturers and users of Part 15 equipment.<sup>6</sup> The Commission also relied on what it described as "a significant amount of information on the issue of mutual coexistence between these parties, which was submitted in the form of theoretical analyses, demonstrations and testing," including twenty such reports that were listed in Appendix B of the 1995 Order. The Commission's requirement was codified in Section 90.353 of the Commission's rules.<sup>7</sup>

A number of parties filed petitions seeking further detail regarding the Commission's unacceptable level of interference standard, which were placed on public notice for comment. In response, the Commission released an Order on Reconsideration in March 1996, which explained that the testing requirement was intended to ensure that M-LMS networks "are not operated in such a manner as to degrade, obstruct or interrupt Part 15 devices to such an extent that Part 15 operations will be negatively affected."<sup>8</sup> At the same time, the Commission explained that the testing rules "do not modify our Part 15 rules by elevating the status of Part 15 providers, . . . Part 15 operations remain secondary; the testing requirement is merely an attempt to achieve the most efficient coexistence possible among the various users of the band."<sup>9</sup>

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<sup>3</sup> See *New America Letter* at 4; *Public Knowledge Letter* at 2.

<sup>4</sup> See *New America Letter* at 4; *Public Knowledge Letter* at 2.

<sup>5</sup> See Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Report and Order*, PR Docket No. 93-61, 10 FCC Rcd 4695 (1995) ("1995 M-LMS Order").

<sup>6</sup> See *id.*, ¶ 10.

<sup>7</sup> 47 C.F.R. § 90.353.

<sup>8</sup> See Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Order on Reconsideration*, PR Docket No. 93-61, 11 FCC Rcd 16905, ¶ 15 (1996) ("Order on Reconsideration").

<sup>9</sup> *Id.*, ¶ 17.

The Commission also considered and expressly declined to adopt specific test procedures to satisfy the unacceptable levels of interference requirement, concluding that any mandatory test process would be extremely difficult to develop in a technological neutral manner and could impair the development of position location services. As the Commission explained

We recognize that LMS systems employ different methods to provide location and monitoring that are constantly changing to keep up with consumer demand. Moreover, the Part 15 industry has an even greater array of technologies that fluctuate in response to the needs of the public. *It would be inappropriate* to apply uniform testing parameters to those varied technologies, as no one testing method would adequately address the needs of either LMS or Part 15 operations. Instead, we believe that the more prudent course of action would be for LMS and Part 15 operators to work closely together to reach consensus on testing guidelines that satisfy their respective requirements.<sup>10</sup>

This is the approach that Progeny employed. At the urging of the Commission, Progeny worked with interested Part 15 device manufacturers and users to develop a joint test process that was executed throughout the summer and fall of 2012. The results of these tests clearly show that Progeny's M-LMS network will not cause unacceptable levels of interference to Part 15 devices.

The Commission's clarification regarding the definition of its unacceptable levels of interference requirement, however, did not end with its 1996 Order on Reconsideration. One party filed a petition seeking further clarity on the specific requirements of the demonstration obligation. The party's petition was, of course, placed on public notice for comment. The Commission then issued a Memorandum Opinion and Order, which further explained that the unacceptable levels of interference requirement

does not mean that Part 15 devices are entitled to protection from interference. They are not. Rather, we were explaining our decision to place a testing condition on multilateration LMS licenses. The purpose of the testing condition is to insure that multilateration LMS licensees, when designing and constructing their systems, take into consideration a goal of minimizing interference to existing deployments or systems of Part 15 devices in their area, and to verify through cooperative testing that this goal has been served.<sup>11</sup>

As the Commission predicted in its 1996 Order on Reconsideration, the technical designs for M-LMS networks continued to develop and mature. So much so that, in order to construct a state-of-the-art position location network, Progeny necessitated waivers of certain technical rules that required location

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<sup>10</sup> *Id.*, ¶ 16 (emphasis added).

<sup>11</sup> Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Memorandum Opinion and Order and Further Notice of Proposed Rule Making*, PR Docket No. 93-61, 12 FCC Rcd 13942, ¶ 69 (1997) ("1997 MO&O").

determinations to be made using three transmission paths rather than just one transmission path.<sup>12</sup> The waivers that were requested by Progeny were further justified because they substantially reduced the potential for interference to Part 15 devices.

The Commission issued a public notice requesting comment on Progeny's waiver request<sup>13</sup> and in response, several parties addressed the preexisting requirement for Progeny to demonstrate that its network would not cause unacceptable levels of interference to Part 15 devices. The Commission acknowledged these comments and reaffirmed that its unacceptable levels of interference requirement includes two essential components.<sup>14</sup> First, M-LMS licensees must "when designing and constructing their systems, take into consideration a goal of minimizing interference to existing deployments or systems of Part 15 devices in their area," and, second, they must "verify through cooperative testing that this goal has been served."<sup>15</sup>

The Commission concluded in its waiver order that Progeny satisfied the first prong of this requirement because "Progeny's proposal takes the goal of minimizing interference to other users into account."<sup>16</sup> As for the second prong, the Commission instructed Progeny that

once it has completed design of its M-LMS system but prior to commencing commercial operations, to file a report in this proceeding that provides details on the M-LMS system design (e.g., proposed transmit bandwidth, power levels and power controls, duty cycle, sharing techniques, etc.), describes the process by which it carried out the field testing, including the particular types of Part 15 devices tested, and demonstrates that its M-LMS system will not cause unacceptable levels of interference to Part 15 devices that operate in the 902-928 MHz band.<sup>17</sup>

Progeny conducted its initial field tests in 2011 using an independent test consultant. Progeny also tried to involve Itron in its 2011 test process, but the company refused to participate.<sup>18</sup> Progeny filed

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<sup>12</sup> See Petition for Waiver of the Rules and Request for Expedited Treatment, Progeny LMS, LLC, WT Docket No. 11-49 (Mar. 8, 2011).

<sup>13</sup> See *Public Notice*, Wireless Telecommunications Bureau Seeks Comment on Request by Progeny LMS, LLC For Waiver of Certain Multilateration Location and Monitoring Service Rules, WT Docket No. 11-49, DA 11-446, 26 FCC Rcd 3495 (WTB 2011).

<sup>14</sup> *Progeny Waiver Order*, ¶ 25.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*, ¶ 26.

<sup>17</sup> *Id.*, ¶ 29.

<sup>18</sup> See Email from Jay Holcomb, Itron, Inc. to Gary Parsons, Progeny LMS, LLC, dated Nov. 11, 2011 (included as an attachment to Letter from Henry Goldberg, Attorney for Itron, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, Ex Parte Presentation, WT Docket No. 11-49 (May 1, 2012) (refusing to participate in joint Part 15 testing with Progeny).

the independent test results with the Commission on January 27, 2012<sup>19</sup> and, on February 14, 2012, they were placed on public notice for comment.<sup>20</sup> As repeatedly noted in the public notice, the primary issue upon which comment was sought was whether Progeny's test results demonstrated whether Progeny's service would cause unacceptable levels of interference to Part 15 devices.<sup>21</sup> In addressing this issue, several parties, including Progeny, addressed the definition of the unacceptable levels of interference requirement.

At the urging of the Commission, Progeny conducted a second round of testing, this time on a joint basis with three entities, Itron, Inc., the Wireless Internet Service Providers Association ("WISPA"), and Landis+Gyr Company. Progeny first worked with these three parties for several months to develop a joint test plan. Progeny then worked with the three parties for several more months to execute the tests, filing test reports detailing the results of the joint testing with each respective party on October 31, 2012.<sup>22</sup> The Commission placed these test reports on public notice for comment on November 20, 2012.<sup>23</sup> As the Commission again noted in this public notice, the purpose of the comment process was to address the requirement on Progeny that it demonstrate that its network does not cause unacceptable interference to Part 15 devices.<sup>24</sup> Once again, a number of parties, including Progeny, addressed in their comments and reply comments the definition of the unacceptable levels of interference requirement.

This means that the issue of the appropriate interpretation the Commission's unacceptable levels of interference requirement and the process for testing compliance with this requirement has been explicitly or implicitly placed on public notice for comment by the Commission as many as seven different times. The Commission therefore has more than ample record and authority to reach a decision in this proceeding both on the issue of how to interpret its unacceptable level of interference requirement and on the question of whether the joint tests that were conducted on Progeny's network satisfy the requirement.

The public interest organizations have identified no procedural or substantive shortcoming in the record in this proceeding, and have not explained why an additional public notice, which would be the eighth on this subject, could elucidate any further the Part 15 testing and demonstration requirement that

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<sup>19</sup> See Letter from Bruce A. Olcott, Counsel to Progeny LMS, LLC, to Marlene H. Dortch, Secretary, Federa Communications Commission, Part 15 Test Report and M-LMS Network Description, WT Docket No. 11-49 (Jan. 27, 2012).

<sup>20</sup> See *Public Notice*, The Wireless Telecommunications Bureau and the Office of Engineering and Technology Seek Comment on Progeny's M-LMS Field Testing Report, 27 FCC Rcd 1579 (WTB/OET 2012).

<sup>21</sup> See *id.* at 1-2.

<sup>22</sup> See *Joint Progeny & Itron Testing*, WT Docket No. 11-49 (Oct. 31, 2012); *Joint Progeny & Landis+Gyr Testing*, WT Docket No. 11-49 (Oct. 31, 2012); *Joint Progeny & WISPA Testing*, WT Docket No. 11-49 (Oct. 31, 2012).

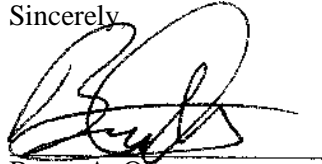
<sup>23</sup> See *Public Notice*, The Wireless Telecommunications Bureau and the Office of Engineering and Technology Seek Comment on Progeny's Join M-LMS Field Testing Reports, WT Docket No. 11-49 (Nov. 20, 2012).

<sup>24</sup> *Id.* at 2.

the Commission imposed on Progeny and other M-LMS licensees. Instead, the record in this proceeding is abundant and persuasive. The Commission should therefore further the public interest, particularly with respect to the critical wireless location needs of the public safety community, by promptly issuing a decision regarding Progeny's compliance with its obligation to demonstrate that its M-LMS network does not cause unacceptable levels of interference to Part 15 devices.

Thank you for your attention to this matter. Please contact the undersigned if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce A. Olcott", written over a horizontal line.

Bruce A. Olcott  
Counsel to Progeny LMS, LLC